

REMARKS

Claims 1-17 were originally pending in this application. New Claims 18-23 have been added in this response. As recited therein, the present invention relates generally to a backpack and chair apparatus with the ability to convert between a balanced backpack and a structurally rigid chair of normal household size. The conversion requires only nominal assembly and effort, does not disrupt the pack load or its accessibility, and requires no tools or separate parts. This advantageously increases the simplicity of pack stowage and the availability of a chair upon demand by those who would otherwise tote a separate chair within or upon a backpack.

I. Drawings

The Examiner objects to Figures 1 and 2 because they include lead lines with no reference characters. Necessary corrections will be made in the formal drawings.

The Examiner further asserts elements 4 and 4a in Figures 3 and 4 are not shown in Figure 2. Necessary corrections will be made in the formal drawings.

The Examiner asserts Figures 1-3 are not a "cross section" as stated in page 3 of the disclosure. The specification has been amended to state that Figures 1-3 are side views.

The Examiner asserts that the latch 12, 13 is unclear in the Figures. The Applicant herewith has submitted proposed new Figures 5 and 6 that show a close-up view of the catch 12, 13 to aid in the understanding of the claimed invention. It should be noted that the disclosed catch structure is but one

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embodiment of a means for securing the swing arm to the frame. Acceptance of these proposed new drawings, which are supported by original Figure 4, is respectfully requested.

The Examiner asserts the reference characters in Figure 4 are too small and not readily legible. Necessary corrections will be made in the formal drawings. A proposed replacement "draft" version of Figure 4 is attached. Approval of the same is respectfully requested.

The Examiner asserts the list of chair parts in Figure 4 include markings that need to be corrected. Necessary corrections will be made in the formal drawings. Moreover, the parts list has been moved to the specification.

Claims 1-16 stand rejected under 35 U.S.C. §112, first paragraph and under 35 U.S.C. §112, second paragraph. These rejection are respectfully traversed as discussed below:

II. Specification

The Examiner asserts it is unclear as to how the latch 12, 13 operates. A catch is disclosed on page 5, line 2, wherein it states the jointed swing arm is attached to the frame via respective slide catch. The respective parts of the catches are discussed on page 6, lines 17 and 18 disclosing the brace locking catch and its respective mate the frame locking catch. Furthermore, the Applicant has submitted with this response proposed Figures 4 and 5 showing a close up of the catch that more clearly shows the operation of the catch to aid in the understanding and examination of the application. It should be noted that the disclosed catch structure is but one embodiment of a means for securing the swing arm to the frame.

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The Examiner asserts that at page 6 of the disclosure, it is unclear as to how the strap properly interacts with the frame since it would appear to interfere with closure and opening of the frame. Inherent in the disclosure and the various Figures it can be seen that the flexible straps can be moved out of the way of when converting to chair mode.

The Examiner asserts that in Claim 1, line 5, "the" apparently should be deleted; and in Claim 8, line 2, before "backpack" and "chair" Applicant should insert --the--. The claims have been amended to correct minor typographic errors and to provide proper antecedent basis. No new matter has been added by virtue of the amendments made to the claims.

III. 35 U.S.C. § 112 First Paragraph

Claims 1-16 stand rejected under 35 U.S.C. 112, first paragraph.

The Examiner asserts claim 1 is vague regarding the "latch", which is part of the "locking assembly", rendering an ordinary artisan to speculate as to how this "latch" operates and performs. Applicant respectfully traverses the rejection. The "latch" is not recited in claim 1. The specification does disclose a catch on page 5, line 2, wherein it states the jointed swing arm is attached to the frame via respective slide catch. The respective parts of the catches are discussed on page 6, lines 17 and 18 disclosing the brace locking catch and its respective mate the frame locking catch. The operation of the catch can also be seen in Figures 2-4. Additionally, the Applicant has submitted proposed Figures 5 and 6 showing a close up of the catch that more clearly shows the operation of the catch. It should be noted that the disclosed catch structure is but one embodiment of a means for securing the swing arm to the frame.

In view of the above Applicant submits that the claims meet the

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requirements of 35 U.S.C. 112, first paragraph. Applicant respectfully requests withdrawal of the rejection.

IV. 35 U.S.C. § 112 Second Paragraph

Claims 1-16 are rejected under 35 U.S.C. 112, second paragraph.

The Examiner asserts that claims 1, 6, and 13 are unclear regarding the operation of the locking assembly rendering the claims indefinite. Applicant respectfully traverses the rejection. The "latch" is not recited in claim 1. The specification does disclose a catch on page 5, line 2, wherein it states the jointed swing arm is attached to the frame via respective slide catch. The respective parts of the catches are discussed on page 6, lines 17 and 18 disclosing the brace locking catch and its respective mate the frame locking catch. The operation of the catch can also be seen in Figures 2-4. Additionally, the Applicant has submitted proposed Figures 5 and 6 showing a close up of the catch that more clearly shows the operation of the catch. It should be noted that the disclosed catch structure is but one embodiment of a means for securing the swing arm to the frame.

The Examiner asserts claim 2 is unclear as to the relationship of the chair mode with that set forth in claim 1. Claim 2 has been amended to more clearly describe functionality of the claimed invention. Claims 6 and 13 have also been similarly amended.

In view of the above Applicant submits that the claims meet the requirements of 35 U.S.C. 112, second paragraph. Applicant respectfully requests withdrawal of the rejection.

V. 35 U.S.C. § 102(b)

Claims 1, 2, 4, 5, 6, 9, 10, and 12 are rejected under 35 U.S.C. §102(b) as being anticipated by Black. This rejection is respectfully traversed for the following reasons:

It is axiomatic that for a cited document to constitute an anticipation, all of the material elements of a claim must be found in the cited document. See for example, *In re Marshall*, 577 F.2d 301, 198 USPQ 344 (CCPA 1978); and *In re Kalm*, 378 F.2d 959, 154 USPQ 10 (CCPA 1967).

As reaffirmed by the Court of Appeals for the Federal Circuit in *Kalman v. Kimberly Clark Corp.*, 713 F.2d 760 at 771, 218 USPQ 781 at 789 (Fed.Cir. 1983), *cert. denied*, 104 S.Ct. 1284 (1984):

A party asserting that a patent claim is anticipated under 35 U.S.C. §102 must demonstrate, among other things, identity of invention. In cases like this, identity of invention is a question of fact . . . and one who seeks such a finding must show that each element of the claim in issue is found, either expressly described or under principles of inherency, in a single prior art reference, or that the claimed invention was previously known or embodied in a single prior art device or practice.

(citations omitted)

See also, *Tyler Refrigeration v. Kysor Industrial Corp.*, 777 F.2d 687, 227 USPQ 845 (1985) and compare *Kloster Speedsteel AB v. Crucible, Inc.*, 793 F.2d 1565, 230 USPQ 81 (Fed.Cir. 1986).

Not only must all of the elements of the claimed invention be present in

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the allegedly anticipatory prior art reference, that reference must also be enabling, i.e., the alleged disclosed matter must be placed in the public's hands for the reference to be useful under 35 U.S.C. §102. See, *Akzo N.V. v. United States International Trade Commission*, 808 F.2d 1471, 1 USPQ2d. 1241 (Fed.Cir. 1986).

The Examiner asserts the Black reference discloses a backpack and chair apparatus comprising a pack (7), frame (4), straps (25), sub-frame (10, 11) and a locking assembly (20-23) as claimed. Applicant respectfully disagrees.

The Black reference discloses a packboard with folding *stool*. The Black reference does not disclose a backpack and chair apparatus as claimed herein. A stool as disclosed in the Black reference does not have a back support which distinguishes it from a chair which does have a back support. Claim 1 has been amended to more clearly point out the back support feature of the frame. In light of this distinction the Black reference is not an appropriate 102(b) reference.

Regarding claim 2, the Examiner asserts the Black reference discloses a backpack mode, with the sub-frame parallel to the frame, and a chair mode with the sub-frame perpendicular to the frame. As stated above the Black reference discloses a packboard and folding stool. It does not disclose a chair with back support. In light of this distinction the Black reference does not anticipate Claim 2.

Regarding claim 4, Examiner asserts that the Black reference discloses a seat cushion. Applicant respectfully traverses the rejection. In addition to the remarks above, the Black reference only discloses a seat (16) made of canvas, leather or the like. There is no discussion of a seat cushion that can be used as a back support when the apparatus is in backpack mode. In light of this

distinction the Black reference does not anticipate Claim 4.

Regarding claim 5, Examiner asserts that the Black reference discloses a cushion that is "removably" attached to the sub-frame if so desired. The Applicant respectfully traverses the rejection. As stated above the Black reference fails to disclose a seat cushion. In light of this distinction the Black reference does not anticipate Claim 5.

In view of the above Applicant submits that the rejected claims meet the requirements of 35 U.S.C. §102(b). Applicant respectfully requests reconsideration and withdrawal of the rejection.

VI. 35 U.S.C. § 103

Claims 3 and 11 are rejected under 35 U.S.C. §103(a) as being unpatentable over Black in view of MacLean ('064). This rejection is respectfully traversed for the following reasons:

As the Federal Circuit has repeatedly stated, "virtually all inventions are combinations of old elements." Therefore, an Examiner may often find every element of a claimed invention in the prior art. If identification of each claimed element in the prior art were sufficient to negate patentability, very few patents would ever issue. Furthermore, rejecting patents solely by finding prior art corollaries for the claimed elements would permit an Examiner to use the claimed invention itself as a blueprint for piecing together elements in the prior art to defeat the patentability of the claimed invention. To counter this potential weakness in the obviousness construct, the "suggestion to combine" requirement stands as a critical safeguard against hindsight analysis and rote application of the legal test for obviousness. Applicant submits that

it is the "suggestions to combine" that is lacking in all of the Section 103(a) obviousness rejections made in this Office Action. Where is the motivation? It must come from the prior art, not from Applicant's disclosure.

Regarding claims 3 and 11, Examiner asserts that although it is unclear if the pack is removable from the frame in Black, the MacLean reference discloses a removable pack. Applicant respectfully disagrees with the proposed combination of references as lacking the necessary motivation to make the proposed combination. Each of the references teaches a complete inventive concept. Neither makes any teaching or suggestion which would motivate the skilled artisan to make the changes necessary to achieve the presently claimed invention. Accordingly, the proposed combination fails to set forth a *prima facie* case of obviousness and this rejection should be reconsidered and withdrawn.

Claims 7, 8, 13, 14, and 16 are rejected under 35 U.S.C. §103(a) as being unpatentable over Black in view of Fisher.

Regarding claim 7, Examiner asserts that although the locking assembly does not include a jointed arm, the Fisher reference discloses another chair having a sub-frame (6) and locking assembly (see lead lines 14,16) which is a jointed swing arm (see Figure 1) which includes a member (16) removably attachable to a frame (1) to lock the frame, sub-frame, and locking assembly in place to stabilize the chair.

Fisher is not analogous art. Fisher is directed to a collapsible chair not a backpack that can be converted into a chair. Accordingly, Applicant respectfully disagrees with the proposed combination of references as lacking the necessary motivation to make the proposed combination. Each of the references teaches a complete inventive concept. Neither makes any teaching or

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suggestion which would motivate the skilled artisan to make the changes necessary to achieve the presently claimed invention. Accordingly, the proposed combination fails to set forth a *prima facie* case of obviousness and this rejection should be reconsidered and withdrawn.

Regarding claim 14, the Examiner asserts Black in combination with Fisher disclose a locking assembly comprising a plurality of said jointed swing arm (see elements 20 and 21 in Black in combination with element 16 in Fisher). Applicant respectfully traverses the rejection.

Fisher is not analogous art. Fisher is directed to a collapsible chair not a backpack that can be converted into a chair. Accordingly, Applicant respectfully disagrees with the proposed combination of references as lacking the necessary motivation to make the proposed combination. Each of the references teaches a complete inventive concept. Neither makes any teaching or suggestion which would motivate the skilled artisan to make the changes necessary to achieve the presently claimed invention. Accordingly, the proposed combination fails to set forth a *prima facie* case of obviousness and this rejection should be reconsidered and withdrawn.

Claim 15 is rejected under 35 U.S.C. §103(a) as being unpatentable over Black in view of Fisher as applied above and further in view of MacLean ('064).

Regarding claim 15, the Examiner asserts that although it is unclear if the pack is removable from the frame, attention is directed to the MacLean reference as discussed above. Applicant respectfully traverses the rejection.

Applicant respectfully disagrees with the proposed combination of references as lacking the necessary motivation to make the proposed combination. Each of the references teaches a complete inventive concept.

Neither makes any teaching or suggestion which would motivate the skilled artisan to make the changes necessary to achieve the presently claimed invention. Accordingly, the proposed combination fails to set forth a *prima facie* case of obviousness and this rejection should be reconsidered and withdrawn.

Claim 17 is rejected under 35 U.S.C. §103(a) as being unpatentable over Black in view of Fisher as applied above and further in view of Gatling.

Regarding claim 17, the Examiner asserts that although the cushion in Black does not include a pad removable therefrom, the Gatling reference which discloses another cushion having foam provided within a shell of canvas material (see column 2, lines 30 et seq.). Applicant respectfully traverses the rejection.

As discussed above, Fisher is non-analogous art. Furthermore, Gatling is non-analogous art. Gatling is directed to a cushion that can be carried like a backpack not a backpack that can be converted into a chair. Accordingly, Applicant respectfully disagrees with the proposed combination of references as lacking the necessary motivation to make the proposed combination. Each of the references teaches a complete inventive concept. Neither makes any teaching or suggestion which would motivate the skilled artisan to make the changes necessary to achieve the presently claimed invention. Accordingly, the proposed combination fails to set forth a *prima facie* case of obviousness and this rejection should be reconsidered and withdrawn.

In view of the above Applicant submits that the rejected claims meet the requirements of 35 U.S.C. §103. Applicant respectfully requests reconsideration and withdrawal of the rejections thereunder.

VII. Conclusion

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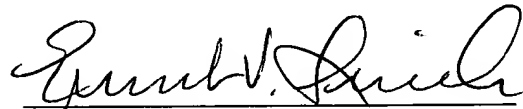
Office Action Response
U.S.S.N. 09/615,683
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Attached hereto is a marked-up version of the changes made to the specification and claims by the current amendment. The attached page is captioned "Version with markings to show changes made."

In view of the above amendments and remarks, Applicant respectfully requests reconsideration of the application and allowance of claims 1-23.

Should the Examiner wish to discuss any of the amendments and/or remarks made herein, the undersigned attorney would appreciate the opportunity to do so. Thus the Examiner is hereby invited to call the undersigned, collect at the number shown below.

Respectfully submitted,



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**VERSION WITH MARKINGS TO SHOW CHANGES
MADE**

IN THE SPECIFICATION:

On Page 3 after the heading "BRIEF DESCRIPTION OF THE DRAWINGS" please amend the descriptions of Figures 1, 2 and 3 as follows:

Figure 1 is a side view of the backpack and chair apparatus in the backpack mode. [Figure 1 is a cross section of the backpack and chair apparatus in the backpack mode.]

Figure 2 is a side view of the backpack and chair apparatus being converted from the backpack mode to the chair mode. [Figure 2 is a cross section of the backpack and chair apparatus being converted from the backpack mode to the chair mode.]

Figure 3 is a side view of the backpack and chair apparatus in the chair mode. [Figure 3 is a cross section of the backpack and chair apparatus in the chair mode.]

On Page 4, please amend the second full paragraph beginning at line 8, as follows:

Figure 3 shows the apparatus in chair mode, with the sub-frame perpendicular to the frame. The locking assembly is in chair mode locking position with the jointed swing arms unfolded from the sub-frame and secured to the frame, thereby acting as the legs of the chair and a bracing mechanism to lock and secure the sub-frame to remain in the chair mode when sat on by a person. The cushion is acting as a seat cushion. In this mode, one sits on the

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cushion and sub-frame with his or her back resting against the upper portion of the frame. The chair is structurally rigid and of normal household size. While in the chair mode, the storage pack and all compartments are easily accessible. Referring to Figure 4, the combination of slat 8 and 7A aid in preventing the chair-mode apparatus from sinking into soft ground without the need for apparatus feet. As shown in Figure 4, the following parts are used in this embodiment of the PAC-A-CHAIR:

- 1 Left Frame Upright
- 1a Right Frame Upright
- 2 Left Seat Support
- 2a Right Seat Support
- 3 Left Chair Leg
- 3a Right Chair Leg
- 4 Left Locking Brace
- 4a Right Locking Brace
- 5 Chair Leg Brace
- 6 Top Frame Brace
- 7 Top Strap Brace
- 7a Bottom Strap Brace
- 8 Bottom Frame Brace
- 9 Inside Seat Slats 3 pc.
- 10 Outside Seat Slats 3 pc.
- 11 Seat Brace 2 pc.
- 12 Bottom Frame Brace Catch
- 13 Locking Brace Catch
- 14 1 1/4" x 5/16 Rivet
- 15 Spacer washer
- 16 Rivet Washer
- 17 Turn Buckle
- 18 Slide Catch Rivet
- 19 Slide Catch Screws # 6 x 3/4
- 20 Turn Buckle Screws # 6 x 3/4
- 21 Brass # 8 x 1
- 22 Seat Slate Screw # 8 x 1
- 23 Seat Brace Screw # 6 x 3/4
- 24 D Ring
- 25 Wedge Shape Seat Cushion /Back Support
- 26 Brace Strap
- 27 Shoulder Strap
- 28 Pack Bag

IN THE CLAIMS:

Please amend the claims as follows:

1. (Amended) A backpack and chair apparatus, comprising:
a storage pack;
a frame attached to said storage pack, providing rigid structure and back support;
a plurality of straps attached to said frame enabling a person to carry [the] said frame and said storage pack on one's back in a backpack mode;
a sub-frame pivotally attached to said frame and capable of being pivoted from the backpack mode to a chair mode thereby enabling a person to sit on the apparatus as a chair;
a locking assembly pivotally attached to said sub-frame and capable of being pivoted from a backpack mode enabling position to a chair mode locking position to lock and secure the sub-frame when in the chair mode so that the apparatus remains in the chair mode when sat on by a person.

2. (Amended) The backpack and chair apparatus of claim 1, wherein the sub-frame is capable of being pivoted from the backpack mode, wherein the sub-frame is positioned parallel to the frame, to a chair mode, wherein the sub-frame is positioned perpendicular to the frame, thereby enabling a person to sit on the apparatus as a chair.

6. (Amended) A backpack and chair apparatus, comprising:
a storage pack;
a frame attached to said storage pack providing rigid structure and back support;
a plurality of straps attached to said frame enabling a person to carry the said frame and said storage pack on one's back in a backpack mode;

a sub-frame pivotally attached to said frame and capable of being pivoted from the backpack mode, wherein the sub-frame is positioned parallel to the frame, to a chair mode, wherein the sub-frame is positioned perpendicular to the frame, thereby enabling a person to sit on the apparatus as a chair;
a locking assembly pivotally attached to said sub-frame and capable of being pivoted from a backpack mode enabling position to a chair mode locking position to lock and secure the sub-frame when in the chair mode so that the apparatus remains in the chair mode when sat on by a person;
a cushion attached to the sub-frame such that it acts as a back support when the apparatus is in the backpack mode and a seat cushion when the apparatus is in the chair mode.

8. (Amended) The backpack and chair apparatus of claim 7, wherein conversion of the sub-frame between the backpack mode and the chair mode, and correspondingly of the locking assembly between the backpack enabling position and the chair locking position, requires no tools of assembly and is performed with nominal effort.

13. (Amended) A backpack and chair apparatus, comprising:
a storage pack;
a frame attached to said storage pack providing rigid structure and back support;
a plurality of straps attached to said frame enabling a person to carry the said frame and said storage pack on one's back in a backpack mode, wherein said straps are attached to the frame at a position that facilitates a balanced pack load that does not ride uncomfortably low on a user's back when in the backpack mode;
a sub-frame pivotally attached to said frame and capable of being pivoted from the backpack mode, wherein the sub-frame is positioned parallel to the frame, to a chair mode, wherein the sub-frame is positioned perpendicular to

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the frame, thereby enabling a person to sit on the apparatus as a chair of normal household stability and size;

a locking assembly pivotally attached to said sub-frame and capable of being pivoted from a backpack mode enabling position to a chair mode locking position to lock and secure the sub-frame when in the chair mode so that the apparatus remains in the chair mode when sat on by a person, wherein said locking assembly comprises a plurality of jointed swing arms pivotally attached at one end to the sub-frame and removably attachable at the other end to the frame, such that one segment of each jointed swing arm acts as a chair leg to the sub-frame when in the chair mode;

wherein conversion of the sub-frame between backpack mode and chair mode, and correspondingly of the locking assembly between the backpack enabling position and the chair locking position, requires no tools of assembly and is performed with nominal effort;

a cushion attached to the sub-frame such that it acts as a back support when the apparatus is in the backpack mode and a seat cushion when the apparatus is in the chair mode.

Please add the following new claims:

18. (New) The backpack and chair apparatus of Claim 1 further comprising a strap attached to the sub frame operative as a sway brace when in the chair mode.

19. (New) The backpack and chair apparatus of Claim 1 further comprising a plurality of seat braces operative as stabilizers to prevent the chair from collapsing forward.

20. (New) The backpack and chair apparatus of Claim 3 wherein the pack bag is removably attached with a plurality of turn buckles.

21. (New) The backpack and chair apparatus of Claim 4 wherein the cushion is wedge shaped.

22. (New) The backpack and chair apparatus of Claim 5 wherein the cushion is attached using side release buckles.

23. (New) The backpack and chair apparatus of Claim 7 wherein the locking assembly further comprises a male locking brace and a female brace catch that interconnect to secure the locking assembly.